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MEMORANDUM FOR: Haviland Smith, Jr.
SA/DDCI

FROM: Lyle L. Miller
Acting Legislative Counsel

SUBJECT: Spot Report Dated 24 May 1978--Expression of Concern by [Belgian Service] with "U.S. Law" on Reporting to the Congress

1. (S) Subject memorandum notes that the [Belgian Service] has registered concern over a "copy of a U.S. law ... which could be interpreted as obliging CIA to identify 'to certain members of the Congress' its sources" and sources of liaison services if known. My view is that the quoted "U.S. law" is the intelligence charter legislation (S. 2525/H.R. 11245), which, of course, is not yet law but which could be mischaracterized as such. We have received expressions of concern from other liaison services regarding provisions in the charter legislation.

2. (U) There is no provision in the charter legislation that explicitly would require the CIA to disclose intelligence sources to the Congress. There are, however, several provisions that could be construed to extend the reach of the Congress into sources and liaison matters. These provisions include the following:

a. Subsection 114(j) would require that all proposed liaison agreements be reported to the oversight committees.

b. Subsection 137(b) would require notification to the oversight committees whenever an entity of the Intelligence Community requests a foreign service to engage in any activity in which the U.S. entity would be prohibited from engaging without prior Presidential approval.

c. Subsection 152(a) contains the overall congressional oversight provisions, requiring, among other things, that the oversight committees be kept "fully and currently informed" and that the Executive will furnish to the committees "any information or material ... whenever requested ..."

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3. (S) There are, of course, other documents which could give rise to a misimpression that the CIA could be required to disclose intelligence sources to the Congress. For example (only the first of these is a "U.S. law"):

a. The Hughes-Ryan Amendment (section 662 of the Foreign Assistance Act of 1961, as amended), which requires notification to the Congress of covert action findings.

b. The general oversight and reporting requirements in S. Res. 400 and H. Res. 658 which established the two intelligence oversight committees; these, of course, are not binding on the Executive Branch.

c. The general oversight and reporting requirements in section 3-4 of E.O. 12036, which, if read without reference to the section's prefatory language or if read by a person not at all familiar with our Government, could be construed as requiring that the Executive Branch must provide any information the oversight committees request.

d. H. Res. 222, which established the House Select Committee on Assassinations, provides for a broad mandate to conduct an inquiry into the assassinations of President Kennedy and Martin Luther King; yet the terms of the Resolution, while providing standard subpoena authority and so forth, do not remotely touch on intelligence. The Memorandum of Understanding between the DCI and the Chairman of the Assassinations Committee, although not a public document, discusses the manner in which identities of intelligence sources will be retained or deleted from material to which the Committee has access. There are no references to liaison sources or arrangements, however, in the Memorandum of Understanding.

e. H. Res. 252, which established the so-called "Fraser Committee" to investigate aspects of Korean-American relations, similarly grants the Committee a broad investigative mandate, including subpoena power, but does not have anything to do with intelligence sources or liaison matters. The operative Memorandum of Understanding recognizes the authority of the DCI to excise sensitive information from material made available to the Committee.

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4. (S) In sum, although it is possible the [Belgian service] expression of concern could have been based on one or more of the items mentioned in paragraph 3 (it would of course be interesting if the service had obtained a copy of one or both of the Memoranda of Understanding discussed above), in my view the reference probably was to intelligence charter legislation.

SIGNED

Lyle L. Miller

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